

**CORRECTED
- DECISION -**

Claimant:
CAROL M MARQUES

Decision No.: 217-BR-15

Date: April 22, 2015

Appeal No.: 1326895

Employer:
MATRIX MARINE GROUP LLC

S.S. No.:

L.O. No.: 64

Appellant: CLAIMANT - REMAND FROM
COURT

Issue: Whether the claimant left work voluntarily, without good cause within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1001.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: May 22, 2015

PROCEDURAL HISTORY

On June 6, 2014, the Board of Appeals ("Board") denied the appellant's request for a review of a decision concerning her claim for unemployment insurance benefits. The Board ruled that the claimant filed a late appeal; therefore, the Board had no jurisdiction to grant the claimant's request. On July 7, 2014, the appellant appealed the decision of the Board of Appeals to the Circuit Court for Anne Arundel County. On November 7, 2014, the Circuit Court for Anne Arundel County issued an order that the Board reverse its decision that the petitioner's appeal was untimely and further ordered that the Board review the decision of the Hearing Examiner in accordance with *Maryland Annotated, Labor & Employment Article, § 8-806(b)*.

FINDINGS OF FACT

The General Assembly declared that, in its considered judgment, the public good and the general welfare of the citizens of the State required the enactment of the Unemployment Insurance Law, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of individuals unemployed through no fault of their own. *Md. Code Ann., Lab. & Empl. Art., § 8-102(c)*. Unemployment compensation laws are to be read liberally in favor of eligibility, and disqualification provisions are to be strictly construed. *Sinai Hosp. of Baltimore v. Dept. of Empl. & Training, 309 Md. 28 (1987)*.

The Board reviews the record *de novo* and may affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner, or evidence that the Board may direct to be taken, or may remand any case to a hearing examiner for purposes it may direct. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)*; *COMAR 09.32.06.04*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*.

The Board has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file.

The matter of a timely appeal has been adjudicated. The Circuit Court for Anne Arundel County has ruled that the claimant filed a timely appeal. Therefore, the Board reopens the instant case for the purpose of reviewing the Hearing Examiner's decision.

The matter before the Board is whether the claimant's separation from this employment was for a disqualifying reason within the meaning of the *Maryland Annotated, Labor & Employment Article, Title 8, § 1001* (Voluntary Quit for good cause, *1002-1002.1* (Gross/Aggravated Misconduct connected with the work), or *1003* (Misconduct connected with the work).

The Board adopts the following findings of fact and conclusions of law:

The claimant worked for this employer, Matrix Marine Group, L.L.C. from January 25, 2013 until July 22, 2014 as a part-time office assistant, earning \$16.25 hourly before quitting due to dissatisfaction with the health care coverage. The claimant worked for the predecessor employer for twelve years.

When the employer took over the company from the previous owner, the employer promised the claimant continued health care coverage. The employer asserted that the claimant received health benefits since the company was acquired. The claimant desired to work part-time, no more than 13 hours weekly. The claimant agreed to work without a vacation, holiday or a raise if the employer would cover her insurance one hundred percent.

As an interim measure, the claimant agreed to pay one-half of seven hundred and thirteen dollars per month health insurance premium while the employer was setting up group insurance. The claimant continued to request that the employer honor the employment agreement during intervening months.

In May, the employer proposed a program that would cost the claimant half of the monthly premium of three hundred and fifty-eight dollars per month. The claimant agreed but continued to press the employer to pay the one hundred percent paid premium that was agreed to at the time of employment.

The employer told the claimant that they could not secure the group insurance by August thirty-first. After seven months, the claimant quit because she believed that her employer was putting the group insurance purchase off and not keeping her employment agreement.

Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1001, provides that individuals shall be disqualified from the receipt of benefits where their unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer, or without valid circumstances. A valid circumstance for voluntarily leaving work is a substantial cause directly attributable to, arising from, or connected with the conditions of employment or actions of the employing unit, or of such necessitous or compelling nature that the individual had no reasonable alternative other than leaving the employment. To establish a valid circumstance for leaving one's employment, a claimant is expected to have attempted to adjust the grievance, or explored other options, prior to leaving unless such action would have been futile or fruitless.

There are two categories of non-disqualifying reasons for quitting employment. When a claimant voluntarily leaves work, he has the burden of proving that he left for good cause or valid circumstances based upon a preponderance of the credible evidence in the record. *Hargrove v. City of Baltimore*, 2033-BH-83; *Chisholm v. Johns Hopkins Hospital*, 66-BR-89.

Quitting for "good cause" is the first non-disqualifying reason. *Md. Code Ann., Lab. & Empl. Art., §8-1001(b)*. Purely personal reasons, no matter how compelling, cannot constitute good cause as a matter of law. *Bd. Of Educ. Of Montgomery County v. Paynter*, 303 Md. 22, 28 (1985). An objective standard is used to determine if the average employee would have left work in that situation; in addition, a determination is made as to whether a particular employee left in good faith, and an element of good faith is whether the claimant has exhausted all reasonable alternatives before leaving work. *Board of Educ. v. Paynter*, 303 Md. 22, 29-30 (1985)(requiring a "higher standard of proof" than for good cause because reason is not job related); also see *Bohrer v. Sheetz, Inc., Law No. 13361, (Cir. Ct. for Washington Co., Apr. 24, 1984)*. "Good cause" must be job-related and it must be a cause "which would reasonably impel the average, able-bodied, qualified worker to give up his or her employment." *Paynter*, 303 Md. at 1193. Using this definition, the Court of Appeals held that the Board correctly applied the "objective test": "The applicable standards are the standards of reasonableness applied to the average man or woman, and not to the supersensitive." *Paynter*, 303 Md. at 1193.

The second category or non-disqualifying reason is quitting for “valid circumstances”. *Md. Code Ann., Lab. & Empl. Art., §8-1001(c)(1)*. There are two types of valid circumstances: a valid circumstance may be (1) a substantial cause that is job-related or (2) a factor that is non-job related but is “necessitous or compelling”. *Paynter 202 Md. at 30*. The “necessitous or compelling” requirement relating to a cause for leaving work voluntarily does not apply to “good cause”. *Board of Educ. v. Paynter, 303 Md. 22, 30 (1985)*. In a case where medical problems are at issue, mere compliance with the requirement of supplying a written statement or other documentary evidence of a health problem does not mandate an automatic award of benefits. *Shifflet v. Dept. of Emp. & Training, 75 Md. App. 282 (1988)*.

It is undisputed that the claimant voluntarily quit her job. The dispute is over whether the claimant was promised one hundred percent payment of her health insurance coverage or less. The claimant asserted that the employer promised her one hundred percent coverage. While, the employer contends that the claimant received health insurance benefits that were the same as she had with the former owner of the business.

The claimant further asserted that she discussed the specific employment conditions with Lou Grasso, a current employee with the company. Mr. Grasso was subpoenaed for each of the appeal hearings. Mr. Grasso failed to attend both hearings.

In light of Mr. Grasso’s failure to attend the appeal hearing after the issuance of a subpoena for him to attend, the hearing examiner ruled that the claimant proffered and the hearing examiner found the claimant’s testimony to be credible that Mr. Grasso had assured the claimant that the claimant would have health insurance and that the employer had agreed to pay for one hundred percent of her health insurance benefit. There is nothing to impeach the claimant’s testimony.

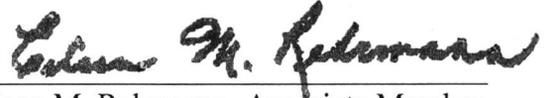
Therefore, the Board finds that based on a preponderance of the evidence that the claimant voluntarily quit for good cause when her employer failed to meet the terms of her employment agreement that required the employer to pay one hundred per cent of her health insurance premiums.

The Board finds based on a preponderance of the credible evidence that the claimant quit her burden of demonstrating that she quit for good cause within the meaning of *Maryland Annotated, Labor & Employment Article, § 8-1001*. The decision shall be reversed for the reasons stated herein and in the hearing examiner’s decision.

DECISION

The Board holds that the claimant voluntarily quit this employment with good cause within the meaning of *Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1001*. The claimant is allowed benefits from the week beginning July 28, 2013, if the claimant is otherwise eligible.

The Hearing Examiner's decision is Reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

CAROL M. MARQUES

MATRIX MARINE GROUP LLC

L. CLIFTON O'CONNOR ESQ.

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

CAROL M MARQUES

SSN #

Claimant

vs.

MATRIX MARINE GROUP LLC

Employer/Agency

Before the:

Maryland Department of Labor,

Licensing and Regulation

Division of Appeals

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 1326895

Appellant: Claimant

Local Office : 64 / BALTOMETRO

CALL CENTER

February 26, 2014

For the Claimant: PRESENT

For the Employer:

For the Agency:

ISSUE(S)

Whether the claimant's separation from this employment was for a disqualifying reason within the meaning of the MD. Code Annotated, Labor and Employment Article, Title 8, Sections 1001 (Voluntary Quit for good cause), 1002 - 1002.1 (Gross/Aggravated Misconduct connected with the work), or 1003 (Misconduct connected with the work).

PREAMBLE

The Claims Specialist made a "Benefit Determination" on August 21, 2013, to which the claimant timely appealed to the Division of Lower Appeals. On October 15, 2013, Hearing Examiner A C Zimmerman, Esq., entered a *Decision* affirming the aforementioned "Benefit Determination," to which the claimant timely appealed to the Board of Appeals. By *Remand Order* entered on November 22, 2013, the Board of Appeals remanded the matter for new decision with a further hearing for the purposes of issuing a subpoena for the claimant's witness only to take testimony from such witness and make such witness available for cross examination for the claimant.

FINDINGS OF FACT

The claimant, Carol M. Marques, began working for this employer, Matrix Marine Group LLC, on January 25, 2013. At the time of separation, the claimant was working as a part-time office assistant, earning \$16.50 per hour. The claimant last worked for the employer on July 22, 2013, before quitting due to dissatisfaction with the employer's health coverage.

On July 29, 2013, the claimant gave Cynthia Westphal Salvo, managing member, an ultimatum to get health insurance in place. When the employer purchased the business from the previous owner, the claimant was promised continued health care. The employer continued her health insurance during the entire time the claimant worked for the employer. The claimant was dissatisfied with the change in the rate of her insurance. Ms. Salvo was looking for a new insurance coverage for all employees at the location the claimant worked and the other location. This took Ms. Salvo longer than expected but did not cause the employer to cease her medical coverage. The claimant was dissatisfied with the time it was taking to get it done.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001 provides that an individual is disqualified from receiving benefits when unemployment is due to leaving work voluntarily. The Court of Appeals interpreted Section 8-1001 in Allen v. CORE Target City Youth Program, 275 Md. 69, 338 A.2d 237 (1975): "As we see it, the phrase 'leaving work voluntarily' has a plain, definite and sensible meaning...; it expresses a clear legislative intent that to disqualify a claimant from benefits, the evidence must establish that the claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment." 275 Md. at 79.

Md. Code Ann., Labor & Emp. Article, Section 8-1001 provides that an individual shall be disqualified for benefits where unemployment is due to leaving work voluntarily without good cause arising from or connected with the conditions of employment or actions of the employer, or without valid circumstances. A circumstance is valid only if it is (i) a substantial cause that is directly attributable to, arising from, or connected with conditions of employment or actions of the employing unit; or (ii) of such necessitous or compelling nature that the individual has no reasonable alternative other than leaving the employment.

EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the Facts on the credible evidence as determined by the Hearing Examiner.

The claimant had the burden to show, by a preponderance of the evidence, that she voluntarily quit her position for reasons that constitute either good cause or valid circumstances pursuant to the Maryland Unemployment Insurance Law. Hargrove v. City of Baltimore, 2033-BH-83. In this case, this burden has not been met.

The claimant quit the employment because she was dissatisfied with the employer's health insurance coverage. When the employer took over from the previous owner, the employer promised the claimant

continued health insurance coverage. The employer never stopped the claimant's health insurance. The claimant was dissatisfied that her rate had gone up. The employer was making reasonable efforts to change its health insurance plans for the claimant and employees at the employers other location. The claimant felt the employer was taking too long to get the new coverage and issued the employer an ultimatum that if it was not remedied by August 1, 2013 she would quit. The employer was unable to meet her demand, so the claimant's quit became effective August 1, 2013.

The claimant had requested a subpoena for Lou Grasso but he failed to appear at either the original hearing or the hearing set in accordance with the Remand Order of the Board of Appeals. The claimant credibly proffered, and the hearing examiner found the claimant's testimony to be credible, that Mr. Grasso had assured her she would have health insurance with the new employer. As such, Mr. Grasso's testimony was not required at the hearing and the Hearing Examiner is able to render a decision based on the credible evidence presented at the hearing.

It is thus determined that the claimant has concurrently failed to demonstrate that the reason for quitting rises to the level necessary to demonstrate good cause or valid circumstances within the meaning of the sections of law cited above.

DECISION

IT IS HELD THAT the claimant's unemployment was due to leaving work voluntarily without good cause or valid circumstances within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. Benefits are denied for the week beginning July 28, 2013 and until the claimant becomes reemployed and earns at least 15 times the claimant's weekly benefit amount in covered wages and thereafter becomes unemployed through no fault of the claimant.

The determination of the Claims Specialist is reversed.



A C Zimmerman, Esq.
Hearing Examiner

Notice of Right to Request Waiver of Overpayment

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-767-2404. If this request is made, the Claimant is entitled to a hearing on this issue.

A request for waiver of recovery of overpayment does not act as an appeal of this decision.

Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.

Notice of Right of Further Appeal

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision may request a further appeal either in person, by facsimile or by mail with the Board of Appeals. Under COMAR 09.32.06.01A(1) appeals may not be filed by e-mail. Your appeal must be filed by March 13, 2014. You may file your request for further appeal in person at or by mail to the following address:

Board of Appeals
1100 North Eutaw Street
Room 515
Baltimore, Maryland 21201
Fax 410-767-2787
Phone 410-767-2781

NOTE: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: January 27, 2014
BLP/Specialist ID: RWD2E
Seq No: 001
Copies mailed on February 26, 2014 to:

CAROL M. MARQUES
MATRIX MARINE GROUP LLC
LOCAL OFFICE #64